

## DEPARTMENT OF STATE REVENUE

04-20210067.LOF

**Letter of Findings Number: 04-20210067**  
**Use Tax**  
**For Tax Year 2019**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Individual provided sufficient documentation to authorize the Department to waive negligence penalty. The Department cannot waive interest.

### ISSUE

#### I. Use Tax—Penalty and Interest.

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-2.5-3-2; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalty and interest on the use of a recreational vehicle.

### STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer owed use tax on the purchase of a Recreational Vehicle ("RV"). Thus, the Department issued a proposed assessment for use tax, penalty, and interest for the year 2019. Taxpayer protests the assessment of penalty and interest because Taxpayer claims she was misled by a third-party attorney. An administrative hearing was held, and this Letter of Findings results. Further facts will be provided, as necessary.

#### I. Use Tax—Penalty and Interest.

### DISCUSSION

As a result of an audit, the Department issued Taxpayer a Proposed Assessment for consumer use tax, penalty, and interest on the purchase of the RV. Taxpayer does not dispute that she owes the use tax. However, she believes that penalty and interest should be waived. Taxpayer consulted an out-of-state attorney who she claims mislead her into believing she did not have to pay any tax to Indiana if she seldom used the RV in Indiana.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 6-2.5-3-2(a) defines use tax as:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal

property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The Department is authorized to impose a ten percent penalty for failure to timely file a required return and/or remit tax payment. IC § 6-8.1-10-2.1. Penalty waiver is required if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer does not dispute that she owes use tax to Indiana. However, she disputes the imposition of penalty because she was misled and misinformed by an attorney that she would not owe any tax to Indiana. Taxpayer provided documentation supporting this position. Therefore, Taxpayer has established that she relied on the professional advice of a licensed attorney in attempting to fulfil her Indiana tax duties. Because the Department believes she was misled and misinformed, the penalty under IC § 6-8.1-10-2.1 and [45 IAC 15-11-2](#) will be waived.

Additionally, Taxpayer protests the Department's imposition of interest on her tax liability. IC § 6-8.1-10-1(e) explains that the Department is not permitted to waive interest. Therefore, waiver of interest cannot be granted.

### FINDING

Taxpayer's protest is sustained in part and denied in part.

August 30, 2021

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An [html](#) version of this document.